

## **Exhibit 2**

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April 27, 2021

Epic Games, Inc. v. Apple Inc., No. 20-cv-05640

Dear Mark:

I write in response to your letter dated April 26, 2021, regarding the written direct testimony of Professor Susan Athey and Professor James W. Mickens.

Your claim that Professors Athey and Mickens have “improperly attempted to supplement their disclosed opinions with new opinions and written testimony that relies on materials not previously disclosed or relied upon” is incorrect. Neither witness is expressing new opinions in their direct testimony, and neither has relied on the evidence that is the subject of your letter in forming his or her opinions, which both witnesses timely disclosed in their expert reports.

With respect to Professor Athey, the evidence at issue cited in her testimony was not available to her until after she had finished drafting her report and after her deposition. Her written testimony made clear that “[w]hen formulating [her] opinions, [she] could not consult confidential Apple documents, pursuant to the Protective Order in this matter.” (Athey Written Testimony ¶ 86.) It was only after Apple recently withdrew its confidentiality designations that she could review them. (*Id.*) Thus, it was not possible for Professor Athey to have seen these documents until now. It is entirely proper for her to have reviewed newly available evidence. But as her testimony states, Professor Athey “did not rely on these documents to form [her] opinions”. (*Id.* ¶ 87.) They also do not change her opinions in any way. The cited documents simply confirm her existing opinions. (*Id.*) Therefore, her discussion of these documents does not run afoul of either the Federal Rules or the parties’ stipulation. Accordingly, Epic will not withdraw paragraphs 86-96 of Professor Athey’s written testimony.

As to Professor Mickens, his February 16, 2021 expert report originally referred to the public version of Apple’s Platform Security document from Spring of

2020 for the language that currently appears in paragraph 94 of his testimony. This document appeared in Appendix A (“Materials Relied Upon”) of Professor Mickens’s expert report. (*See* PX2888.64.) Apple subsequently withdrew the confidentiality designation for an earlier, non-public version of its Platform Security document (PX461), which Epic had marked as an intended trial exhibit, and which was used in fact depositions. Paragraph 94 of Professor Mickens’s written testimony used the intended trial exhibit version of the document in place of the previously cited public version. This was purely for convenience and efficiency. Among other things, Epic cites PX461 in its Proposed Findings of Fact. For reference, we have attached the Spring 2020 version of Apple’s Platform Security document referenced in Professor Mickens’s expert report (the quoted language can be found on pg. 6 of the document). The information Professor Mickens references is the same in both documents and there is no possible prejudice that Apple could argue. Accordingly, Epic will not withdraw paragraph 94 of Professor Mickens’s written testimony.

Sincerely,

*/s/ Gary A. Bornstein*  
Gary A. Bornstein

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